

1 AN ACT concerning proceeds from tobacco litigation.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the  
5 Tobacco Settlement Securitization Act.

6 Section 2. Public policy. The General Assembly finds  
7 that the most prudent way to manage the proceeds of the  
8 Master Settlement Agreement is to securitize a portion of the  
9 State's interest in the Master Settlement Agreement to enable  
10 the State to diversify its interest and minimize the risk of  
11 a drastic decline in the amounts paid to the State.

12 Section 5. Definitions. In this Act:

13 "Bonding Authority" means the Tobacco Settlement Bonding  
14 Authority created under Section 10.

15 "Board" means the Board of Directors of the Tobacco  
16 Settlement Bonding Authority.

17 "Bond" means a bond or note or any other evidence of  
18 obligation for borrowed money deemed appropriate by the Board  
19 of Directors of the Tobacco Settlement Bonding Authority.

20 "Public member" means a person who is not, and is not  
21 related to anyone who is, an elected official, employee,  
22 consultant, agent, attorney, or accountant of the State of  
23 Illinois or any political subdivision of the State of  
24 Illinois.

25 "Master Settlement Agreement" means the Master Settlement  
26 Agreement entered in the case of the People of the State of  
27 Illinois v. Phillip Morris, et al. (Circuit Court of Cook  
28 County, No. 96-L13146).

29 Section 10. Creation. There is created the Tobacco

1 Settlement Bonding Authority, which shall constitute a  
2 political subdivision, a body politic and corporate, and a  
3 municipal corporation of the State of Illinois. The State  
4 Treasurer may sell to the Bonding Authority up to 40% of all  
5 payments that the participating tobacco manufacturers are  
6 required to pay to the State under the Master Settlement  
7 Agreement. The Bonding Authority shall pay its  
8 administrative expenses and debt service expenses from the  
9 payments that it purchases from the Master Settlement  
10 Agreement, provided that its administrative expenses are  
11 approved by the Board of Directors and do not exceed 0.5% of  
12 the payments transferred to the Bonding Authority. The  
13 Bonding Authority shall, by April 14 of each year, after  
14 payment of debt service, other obligations, and  
15 administrative expenses, remit to the State Treasurer for  
16 deposit into the Tobacco Settlement Recovery Fund the  
17 remainder of the proceeds of the Master Settlement Agreement  
18 that it has received, including investment earnings and any  
19 bond proceeds including earnings on the investment of the  
20 bond proceeds prior to remittance to the Treasurer. The  
21 State Treasurer shall invest any moneys of the Bonding  
22 Authority, on behalf of the Bonding Authority, in any  
23 investment permitted by the Deposit of State Moneys Act or  
24 any guaranteed investment contract the provider of which has  
25 long-term debt rated in one of the three highest rating  
26 categories (without regard to any rating refinement or  
27 gradation by numerical or other modifiers) by 2 standard  
28 rating services.

29 Section 15. Board of Directors. The State Treasurer, or  
30 his or her designee, shall serve as the Chairman of the  
31 Board. The Governor shall appoint 2 public members of the  
32 Board, with the advice and consent of the Senate, each for an  
33 initial term expiring July 1, 2004. The Comptroller shall

1 appoint one public member to the Board, with the advice and  
2 consent of the Senate, for an initial term expiring July 1,  
3 2002. The State Treasurer shall appoint one public member  
4 to the Board, with the advice and consent of the Senate, for  
5 an initial term expiring July 1, 2002. At the expiration of  
6 the term of any member, or in the case of a vacancy, a  
7 successor shall be appointed by the elected official, or the  
8 successor of the elected official, who made the appointment  
9 for the initial term. All successors of Board members shall  
10 hold office for a term of 3 years from the first day of July  
11 of the year in which they are appointed, except in case of an  
12 appointment to fill a vacancy. Vacancies for members shall  
13 be filled in the same manner as original appointments for the  
14 balance of the unexpired term. In case of a vacancy during  
15 the recess of the Senate, the Governor, the Comptroller, or  
16 the State Treasurer shall make a temporary appointment until  
17 the next meeting of the Senate, when he or she shall appoint  
18 some person to fill the vacancy. Any person so appointed  
19 whom the Senate confirms shall hold office during the  
20 remainder of the term and until his successor is appointed  
21 and qualified. The initial appointments by the Governor, the  
22 Comptroller, or the State Treasurer shall be effective  
23 immediately. Nothing shall preclude a member from serving  
24 consecutive terms. All members of the Board shall hold their  
25 offices until their successors are appointed.

26 Section 20. Reimbursement of expenses. Reimbursement of  
27 expenses of members and employees of the Bonding Authority  
28 shall not exceed the rates of reimbursement established by  
29 the Governor's Travel Control Board for employees of the  
30 State of Illinois.

31 Section 25. Actions of members. Three members of the  
32 Bonding Authority shall constitute a quorum for the purpose

1 of conducting business. Actions of the Bonding Authority  
2 must receive the affirmative vote of at least 3 members. The  
3 Bonding Authority shall determine the times and places of its  
4 meetings. The members of the Bonding Authority shall serve  
5 without compensation for service as a member but are entitled  
6 to reimbursement of reasonable expenses incurred in the  
7 performance of their official duties.

8 Section 30. Officers.

9 (a) The Bonding Authority shall appoint an Executive  
10 Director, who shall be chief executive officer of the Bonding  
11 Authority. In addition to any other duties set forth in this  
12 Act, the Executive Director shall:

13 (1) Direct and supervise the administrative affairs  
14 and activities of the Bonding Authority, in accordance  
15 with its rules, regulations, and policies.

16 (2) Attend meetings of the Bonding Authority.

17 (3) Keep minutes of all proceedings of the Bonding  
18 Authority.

19 (4) Approve all accounts for salaries and all other  
20 allowable expenses of the Bonding Authority and its  
21 employees and consultants and approve all expenses  
22 incidental to the operation of the Bonding Authority.

23 (5) Perform any other duty that the Bonding  
24 Authority requires for carrying out the provisions of  
25 this Act.

26 (b) The Bonding Authority may appoint other officers of  
27 the Bonding Authority who may or may not be members of the  
28 Board.

29 Section 35. Powers. In addition to the powers set forth  
30 elsewhere in this Act, the Bonding Authority may:

31 (1) Adopt and alter an official seal.

32 (2) Sue and be sued and plead and be impleaded, all

1 in its own name, and agree to binding arbitration of any  
2 dispute to which it is a party.

3 (3) Adopt bylaws, rules, and regulations to carry  
4 out the provisions of this Act.

5 (4) Maintain an office or offices at such place as  
6 the Bonding Authority may designate.

7 (5) Employ, either as regular employees or  
8 independent contractors, consultants, accountants,  
9 attorneys, financial experts, managers and other  
10 professional personnel, and such other personnel as may  
11 be necessary in the judgment of the Bonding Authority,  
12 and fix their compensation.

13 (6) Enter into contracts and agreements of any kind.

14 (7) Issue bonds under Section 40.

15 (8) Exercise all the corporate powers granted  
16 Illinois corporations under the Business Corporation Act  
17 of 1983, except to the extent that powers are  
18 inconsistent with those of a body politic and corporate  
19 of the State.

20 (9) Do all things necessary or convenient to carry  
21 out the powers granted by this Act.

22 Section 40. Bonding.

23 (a) The Bonding Authority may issue bonds which are  
24 revenue bonds that are payable solely from and secured solely  
25 by the proceeds of the Master Settlement Agreement that have  
26 been sold by the State of Illinois to the Bonding Authority  
27 from the Master Settlement Agreement. The Bonding Authority  
28 may issue bonds for the purpose of purchasing an interest of  
29 the State of Illinois in the Master Settlement Agreement, for  
30 the purpose of refunding, advance refunding, or refinancing  
31 outstanding bonds, for the purpose of establishing reserves,  
32 paying the interest on the bonds, and paying costs of  
33 issuance of the bonds, and for any other proper public

1 purpose. Bonds may be issued in one or more series and shall  
2 be payable solely and secured solely by the portion of the  
3 Master Settlement Agreement that the State of Illinois has  
4 sold to the Bonding Authority.

5 (b) Bonds may be authorized by a resolution of the Board  
6 and may be secured by a trust agreement by and between the  
7 Bonding Authority and a corporate trustee or trustees, which  
8 may be any trust company or bank having the powers of a trust  
9 company within or without the State. Bonds may:

10 (1) Mature at any time or times not exceeding 30  
11 years from the effective date of this Act.

12 (2) Notwithstanding the provisions of the Bond  
13 Authorization Act or any other provision of law, bear  
14 interest at any fixed or variable rate or rates  
15 determined by the method provided in the resolution or  
16 trust agreement.

17 (3) Be payable as to principal and interest at any  
18 time or times on or after January 1, 2003, in the  
19 denominations and form, either coupon or registered or  
20 both, and carry the registration and privileges as to  
21 exchange, transfer, or conversion and for the replacement  
22 of mutilated, lost, or destroyed bonds as the resolution  
23 or trust agreement may provide.

24 (4) Be payable in lawful money of the United States  
25 at a designated place.

26 (5) Be subject to the terms of purchase, payment,  
27 redemption, refunding, or refinancing that the resolution  
28 or trust agreement provides.

29 (6) Be executed by the manual or facsimile  
30 signatures of the officers of the Bonding Authority  
31 designated by the Bonding Authority, which signatures  
32 shall be valid at delivery even for one who has ceased to  
33 hold office.

34 (7) Be sold at public or private sale in the manner

1 and upon the terms determined by the Bonding Authority.

2 (8) Have such other terms and provisions as shall  
3 be authorized by resolution of the Board.

4 (c) Any resolution or trust agreement may contain  
5 provisions that shall be a part of the contract with the  
6 holders of the bonds as to:

7 (1) Limitations on the issue of additional bonds,  
8 the terms upon which additional bonds may be issued and  
9 secured, and the terms upon which additional bonds may  
10 rank on a parity with, or be subordinate or superior to,  
11 other bonds.

12 (2) The refunding, advance refunding or refinancing  
13 of outstanding bonds.

14 (3) The procedure, if any, by which the terms of any  
15 contract with holders of the bonds may be altered or  
16 amended, the number of bond holders that must consent  
17 thereto, and the manner in which consent shall be given.

18 (4) Defining the acts or omissions which shall  
19 constitute a default in the duties of the Bonding  
20 Authority to the holders of bonds and providing the  
21 rights or remedies of such holders in the event of a  
22 default which may include provisions restricting  
23 individual right of action by the holders of the bonds.

24 (5) Any other matter relating to the bonds which the  
25 Bonding Authority determines appropriate.

26 (d) In connection with the issuance of its bonds, the  
27 Bonding Authority may enter into arrangements to provide  
28 additional security and liquidity for the bonds. These may  
29 include, without limitation, bond insurance, letters of  
30 credit, lines of credit by which the Bonding Authority may  
31 borrow funds to pay or redeem its bonds, and purchase or  
32 remarketing arrangements for assuring the ability of holders  
33 of the Bonding Authority's bonds to sell or to have redeemed  
34 their bonds.

1 (e) A pledge by the Bonding Authority of the proceeds of  
2 the Master Settlement Agreement that the State of Illinois  
3 has sold to transfer to the Bonding Authority as security for  
4 an issue of bonds or for the performance of its obligations  
5 under any management agreement shall be valid and binding  
6 from the time when the pledge is made. The portion of the  
7 Master Settlement Agreement proceeds that the State of  
8 Illinois has committed to transfer to the Bonding Authority  
9 pledged shall immediately be subject to the lien of the  
10 pledge without any physical delivery or further act, and the  
11 lien of any pledge shall be valid and binding against any  
12 person having any claim of any kind in tort, contract, or  
13 otherwise against the Bonding Authority, irrespective of  
14 whether the person has notice. No resolution, trust  
15 agreement, management agreement or financing statement,  
16 continuation statement, or other instrument adopted or  
17 entered into by the Bonding Authority need be filed or  
18 recorded in any public record other than the records of the  
19 Bonding Authority in order to perfect the lien against third  
20 persons, regardless of any contrary provision of law.

21 (f) The Bonding Authority may issue bonds to refund,  
22 advance refund, or refinance any of its bonds then  
23 outstanding, including the payment of any redemption premium  
24 and any interest accrued or to accrue to the earliest or any  
25 subsequent date of redemption, purchase, or maturity of the  
26 bonds, provided that the Bonding Authority shall not issue  
27 any bonds that mature later than 30 years from the effective  
28 date of this Act.

29 (g) At no time shall the total outstanding bonds of the  
30 Bonding Authority issued under this Section exceed  
31 \$2,500,000,000. Bonds which have been paid, bonds which are  
32 being paid or retired by issuance, sale or delivery of bonds,  
33 and bonds for which sufficient funds have been deposited with  
34 the paying agent or trustee to provide for payment of

1 principal and interest thereon, and any redemption premium,  
2 as provided in the authorizing resolution or indenture, shall  
3 not be considered outstanding for the purposes of this  
4 subsection.

5 (h) The bonds of the Bonding Authority shall not  
6 constitute an indebtedness of the State or of any political  
7 subdivision of the State. The bonds of the Bonding Authority  
8 shall not be an obligation, general or moral, of the State of  
9 Illinois and shall not be an obligation, general or moral,  
10 secured by a pledge of the full faith and credit of the State  
11 of Illinois, and the holders of bonds of the Bonding  
12 Authority may not require the levy or imposition by the State  
13 of any taxes or the application of other State revenues or  
14 funds to the payment of the bonds of the Bonding Authority.  
15 No member of the Bonding Authority or any person executing  
16 the bonds shall be liable personally on the bonds or subject  
17 to any personal liability by reason of the issuance of the  
18 bonds. The foregoing shall be stated on the face of each  
19 bond.

20 (i) The State of Illinois pledges to and agrees with the  
21 holders of the bonds of the Bonding Authority issued pursuant  
22 to this Act that the State will not limit or alter the rights  
23 and powers vested in the Bonding Authority by this Act so as  
24 to impair the terms of any contract made by the Bonding  
25 Authority with those holders or in any way impair the rights  
26 and remedies of those holders until the bonds, together with  
27 interest thereon, with interest on any unpaid installments of  
28 interest, and all costs and expenses in connection with any  
29 action or proceedings by or on behalf of those holders, are  
30 fully met and discharged. In addition, the State pledges to  
31 and agrees with the holders of the bonds of the Bonding  
32 Authority issued pursuant to this Act that the State will not  
33 limit or alter the basis on which the proceeds of the Master  
34 Settlement Agreement that the State of Illinois has sold to

1 the Bonding Authority are to be allocated, deposited, and  
2 paid to the Authority as provided in this Act, or the use of  
3 those funds, so as to impair the terms of any such contract.  
4 The Bonding Authority is authorized to include these pledges  
5 and agreements of the State in any contract with the holders  
6 of bonds issued pursuant to this Section.

7 (j) The Bonding Authority may enter into agreements or  
8 contracts with any person necessary or appropriate to place  
9 the payment obligations of the Bonding Authority under any of  
10 its bonds in whole or in part on any interest rate basis,  
11 cash flow basis, or other basis desired by the Bonding  
12 Authority, including without limitation agreements or  
13 contracts commonly known as "interest rate swap agreements",  
14 "forward payment conversion agreements", and "futures", or  
15 agreements or contracts providing for payments based on  
16 levels of or changes in interest rates, or agreements or  
17 contracts to exchange cash flows or a series of payments, or  
18 agreements or contracts, including without limitation  
19 agreements or contracts commonly known as "options", "puts",  
20 or "calls", to hedge payment, rate spread, or similar  
21 exposure; provided, that any such agreement or contract shall  
22 not constitute an obligation for borrowed money and shall not  
23 be taken into account under this Act or any other debt limit  
24 of the Bonding Authority or the State of Illinois.

25 Section 45. Records and reporting. The Executive  
26 Director shall keep a record of the proceedings of the  
27 Bonding Authority. The State Treasurer shall be custodian of  
28 all Bonding Authority funds and shall be bonded in the amount  
29 the other members of the Bonding Authority may designate.  
30 The accounts and books of the Bonding Authority shall be set  
31 up and maintained in a manner approved by the Auditor  
32 General, and the Bonding Authority shall file with the  
33 Auditor General a certified annual report within 120 days

1 after the close of its fiscal year. The Bonding Authority  
2 shall also file with the Governor, the Secretary of the  
3 Senate, the Clerk of the House of Representatives, and the  
4 Illinois Economic and Fiscal Commission, by March 1 of each  
5 year, a written report covering its activities for the  
6 previous fiscal year. After being so filed, the report shall  
7 be a public record and open for inspection at the offices of  
8 the Bonding Authority during normal business hours.

9 Section 50. Conflicts of interest. No member of the  
10 Board may participate in any decision on any contract entered  
11 into by the Bonding Authority if the member has a 7.5% or  
12 greater pecuniary interest, direct or indirect, in any firm,  
13 partnership, corporation, or association which is or may be a  
14 party to the contract. Contracts or agreements obtained  
15 through properly advertised bid procedures, or the ownership  
16 of stock or other interest in any firm, partnership,  
17 corporation, or association in which the member does not  
18 actively participate in day-to-day management, shall not be  
19 interpreted as a direct or indirect pecuniary interest in  
20 violation of this Act. Notwithstanding any other provision of  
21 law, any contract or agreement entered into in conformity  
22 with this subsection shall not be void or invalid by reason  
23 of any such interest, nor shall any person so refraining from  
24 participation be guilty of any offense, be removed from  
25 office, or be subject to any other penalty on account of that  
26 interest.

27 Section 55. Dissolution. The Tobacco Settlement Bonding  
28 Authority shall be dissolved 30 years after the effective  
29 date of this Act. The Bonding Authority shall not be  
30 dissolved or liquidated by virtue of any proceedings under,  
31 and shall not be subject to, any bankruptcy, insolvency, or  
32 similar federal or State laws.

1           Section 60. Property exempt from execution. All  
2 property of the Bonding Authority is exempt from levy and  
3 sale by virtue of an execution. No execution or other  
4 judicial process may issue against the Bonding Authority's  
5 property, nor may any judgment against the Bonding Authority  
6 be a charge or lien upon its property. However, nothing in  
7 this Act shall apply to or limit the rights of the holder of  
8 any bonds to pursue any remedy for the enforcement of any  
9 pledge or lien given by the Bonding Authority on its revenues  
10 or other money.

11           Section 65. Limitation. Any action or proceeding in any  
12 court to set aside a resolution authorizing the Bonding  
13 Authority's issuance of bonds under this Act or to obtain any  
14 relief upon the ground that the resolution is invalid must be  
15 commenced within 30 days after the Board adopts the  
16 resolution. After this period of limitation expires, no right  
17 of action or defense founded upon the invalidity of the  
18 resolution or any of its provisions may be asserted, nor may  
19 the validity of the resolution or any of its provisions be  
20 open to question in any court on any ground.

21           Section 70. Bonds as legal investments and security.  
22 Notwithstanding any restrictions contained in any other law,  
23 all national banking associations, state banks, trust  
24 companies, savings banks and institutions, building and loan  
25 associations, savings and loan associations, investment  
26 companies and other persons carrying on a banking business,  
27 all insurance companies, insurance associations and other  
28 persons carrying on an insurance business, and all executors,  
29 administrators, guardians, trustees and other fiduciaries,  
30 may legally invest any sinking funds, money or other funds  
31 belonging to them or within their control in any bonds issued  
32 by the Bonding Authority under this Act.

1           Section 75. Tax exemptions. All property of the Bonding  
2 Authority and all bonds issued under this Act are deemed to  
3 constitute essential public and governmental purposes and the  
4 property and the bonds so issued, their transfer and the  
5 income from those bonds are at all times exempt from taxation  
6 within this State. For purposes of Section 250 of the  
7 Illinois Income Tax Act, the exemption of the income from  
8 bonds issued under this Act shall terminate after all of the  
9 bonds have been paid. The amount of such income that shall be  
10 added and then subtracted on the Illinois income tax return  
11 of a taxpayer, pursuant to Section 203 of the Illinois Income  
12 Tax Act, from federal adjusted gross income or federal  
13 taxable income in computing Illinois base income shall be the  
14 interest net of any bond premium amortization.

15           Section 80. Personal liability. Neither the members of  
16 the Board nor any person executing bonds issued under this  
17 Act shall be liable personally on those bonds by reason of  
18 the issuance of the bonds.

19           Section 85. Complete, additional, and alternative  
20 methods. The foregoing Sections of this Act are deemed to  
21 provide a complete, additional, and alternative method for  
22 the doing of the things authorized thereby and shall be  
23 regarded as supplemental and additional to powers conferred  
24 by other laws, provided that the issuance of bonds under this  
25 Act need not comply with the requirements of any other law  
26 applicable to the issuance of bonds. Except as otherwise  
27 expressly provided in this Act, none of the powers granted to  
28 the Bonding Authority under this Act shall be subject to the  
29 supervision or regulation or require the approval or consent  
30 of any municipality or political subdivision or any  
31 department, division, commission, board, body, bureau,  
32 official, or agency thereof or of the State.

1 Section 90. Liberal construction of Act. This Act,  
2 being necessary for the welfare of the State and its  
3 inhabitants, shall be liberally construed to effect its  
4 purposes.

5 Section 95. Severability. If any clause or other  
6 portion of this Act is held invalid, that decision shall not  
7 affect the validity of the remaining portions of this Act.  
8 It is hereby declared that all such remaining portions of  
9 this Act are severable, and that the General Assembly would  
10 have enacted the remaining portions if the portions that may  
11 be so held to be invalid had not been included in this Act.

12 Section 97. The State Finance Act is amended by changing  
13 Section 6z-43 as follows:

14 (30 ILCS 105/6z-43)

15 Sec. 6z-43. Tobacco Settlement Recovery Fund.

16 (a) There is created in the State Treasury a special  
17 fund to be known as the Tobacco Settlement Recovery Fund,  
18 into which shall be deposited all monies paid to the State  
19 pursuant to (1) the Master Settlement Agreement entered in  
20 the case of People of the State of Illinois v. Philip Morris,  
21 et al. (Circuit Court of Cook County, No. 96-L13146) and (2)  
22 any settlement with or judgment against any tobacco product  
23 manufacturer other than one participating in the Master  
24 Settlement Agreement in satisfaction of any released claim as  
25 defined in the Master Settlement Agreement, as well as any  
26 other monies as provided by law. All earnings on Fund  
27 investments shall be deposited into the Fund. Upon the  
28 creation of the Fund, the State Comptroller shall order the  
29 State Treasurer to transfer into the Fund any monies paid to  
30 the State as described in item (1) or (2) of this Section  
31 before the creation of the Fund plus any interest earned on

1 the investment of those monies. The Treasurer may invest the  
2 moneys in the Fund in the same manner, in the same types of  
3 investments, and subject to the same limitations provided in  
4 the Illinois Pension Code for the investment of pension funds  
5 other than those established under Article 3 or 4 of the  
6 Code.

7 (b) As soon as may be practical after June 30, 2001, the  
8 State Comptroller shall direct and the State Treasurer shall  
9 transfer the unencumbered balance in the Tobacco Settlement  
10 Recovery Fund as of June 30, 2001 into the Budget  
11 Stabilization Fund. The Treasurer may invest the moneys in  
12 the Budget Stabilization Fund in the same manner, in the same  
13 types of investments, and subject to the same limitations  
14 provided in the Illinois Pension Code for the investment of  
15 pension funds other than those established under Article 3 or  
16 4 of the Code.

17 (c) The State Treasurer shall administer the Tobacco  
18 Settlement Recovery Fund consistently with the Tobacco  
19 Settlement Securitization Act.

20 (Source: P.A. 91-646, eff. 11-19-99; 91-704, eff. 7-1-00;  
21 91-797, eff. 6-9-00; revised 6-28-00.)

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law.